

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

ROBERT (STAR) LOCKE; dba FT STAR	§	
RANCH,	§	
	§	
Plaintiff,	§	
VS.	§	CIVIL ACTION NO. C-05-125
	§	
DOTTIE CLOWER, <i>et al</i> ,	§	
	§	
Defendant.	§	

**MEMORANDUM AND RECOMMENDATION TO DISMISS  
FOR WANT OF PROSECUTION**

Plaintiff filed this lawsuit in the 28th District Court of Nueces County on March 10, 2005, alleging his rights under the United States Constitution were violated when animals belonging to him were seized by municipal authorities and placed into the care of defendant Clower. Defendant Clower removed the case, alleging federal question jurisdiction. An initial pretrial and scheduling conference was scheduled for Thursday, July 21, 2005, at 1:15 p.m. Defendant and counsel for defendant appeared, but plaintiff did not. Defense counsel orally moved for dismissal for failure of plaintiff to prosecute his case.

**JURISDICTION**

The district court has federal question jurisdiction. 28 U.S.C. § 1331.

**APPLICABLE LAW**

Rule 41(b) of the Federal Rules of Civil Procedures provides for involuntary dismissal when plaintiff fails to prosecute or comply with the rules:

**(b) Involuntary Dismissal: Effect Thereof.** For failure of the plaintiff to prosecute or to comply with these rules or any order of the court, a defendant may move for dismissal of an action or of any claim against the defendant. . . .

Here plaintiff failed to appear for the initial pretrial conference, though he received notice. Plaintiff also failed to timely file any response to the defendant's 12(b)(6) motion to dismiss. Plaintiff appears to have abandoned any interest in prosecuting this case. Dismissal is appropriate. *See Larson v. Scott* , 157 F.3d 1030 (5th Cir. 1998); *Martinez v. Johnson* , 104 F.3d 769 (5th Cir. 1997); *Dorsey v. Scott Wetzel Services, Inc.*, 84 F.3d 170 (5th Cir. 1996).

**RECOMMENDATION**

It is respectfully recommended that plaintiff's claims be dismissed without prejudice for failure to prosecute. Fed. R. Civ. P. 41(b).

ORDERED this 25th day of July, 2005.

  
B. JANICE ELLINGTON  
UNITED STATES MAGISTRATE JUDGE

**NOTICE TO PARTIES**

The Clerk will file this Memorandum and Recommendation and transmit a copy to each party or counsel. Within **TEN (10) DAYS** after being served with a copy of the Memorandum and Recommendation, a party may file with the Clerk and serve on the United States Magistrate Judge and all parties, written objections, pursuant to Fed. R. Civ. P. 72(b), 28 U.S.C. § 636(b)(1)(C) and Article IV, General Order No. 80-5, United States District Court for the Southern District of Texas.

A party's failure to file written objections to the proposed findings, conclusions, and recommendation in a magistrate judge's report and recommendation within TEN (10) DAYS after being served with a copy shall bar that party, except upon grounds of *plain error*, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. Douglass v. United Services Auto Ass'n, 79 F.3d 1415 (5th Cir. 1996) (en banc).